

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN B. ROBBINS, JUDGE

DIVISION II

CA 06-35

ANNICE GIBBS

SEPTEMBER 20, 2006

APPELLANT

V.

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[NO. F100532]

ADDISON SHOE COMPANY and  
CROCKETT ADJUSTMENT  
COMPANY, TPA

APPELLEES

AFFIRMED

Appellant Annice Gibbs appeals a decision by the Workers' Compensation Commission denying her request for additional medical treatment, additional temporary total disability (TTD) benefits, and additional permanent partial disability (PPD) benefits. Appellant, an employee of appellee Addison Shoe Company, sustained admittedly compensable bilateral carpal tunnel syndrome, reported to her employer on December 20, 2000. She received workers' compensation benefits through October 22, 2001, including bilateral surgical release and attendant medical care, TTD associated with her healing period, and a five-percent permanent partial impairment rating to each of her upper extremities. Her authorized treating physician, surgeon Dr. Moore, released her to work and declared her maximally medically improved as of October 22, 2001. Appellant contends that the

Commission's decision denying any further benefits after October 22, 2001, is not supported by substantial evidence. We disagree and affirm.

Our standard of review is well settled. We view the evidence in a light most favorable to the Commission's decision and affirm if it is supported by substantial evidence. *Robinson v. St. Vincent Infirmary Med. Ctr.*, 88 Ark. App. 168, \_\_ S.W.3d \_\_ (2004); *Deffenbaugh Indus. v. Angus*, 313 Ark. 100, 852 S.W.2d 804 (1993). Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Where, as here, the Commission denies benefits because it determines that the claimant has failed to meet the burden of proof, the substantial-evidence standard of review requires us to affirm if the Commission's decision displays a substantial basis for the denial of relief. *McMillan v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *ERC Contr. Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). These rules insulate the Commission from judicial review because it is a specialist in this area and we are not. *See Wade v. Mr. C. Cavanaugh's*, 25 Ark. App. 237, 756 S.W.2d 923 (1988). However, a total insulation would obviously render our function in these cases meaningless. *Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998); *Boyd v. Gen. Indus.*, 22 Ark. App. 103, 733 S.W.2d 750 (1987).

With the preceding rules of appellate review, we examine the evidence presented to the administrative law judge. Appellant started working for appellee in May 1998, when she was approximately thirty-eight years old. She had completed the eleventh grade, and she had worked other jobs through the years for other employers, such as a cook, dish washer, and assembly line employee. Specifically with appellee, her jobs ranged from putting glue and tabs on the footwear, working in the welding department, to “greasing the boot and putting counters in.” Sometime in 2000, her hands began to bother her, with tingling, pain, and numbness, which sometimes kept her awake at night. She reported this to her employer, and by December 2000, she had a compensable claim and was receiving treatment. She was treated by Dr. Jacobs at a primary care facility in Wynne, and then by Dr. Day, an orthopedic surgeon in Jonesboro. Dr. Day performed bilateral carpal tunnel release to treat severe left-sided and moderate to severe right-sided carpal tunnel syndrome. Dr. Day noted in his medical records that appellant was a diabetic.

Dr. Day released appellant to work in early May 2001 under some restrictions, anticipating full work capability by the end of the month. Appellant asked for, but did not receive, an independent medical examination around this time. Appellant returned to Dr. Day on June 21, 2001, complaining of pain in her forearms. Dr. Day examined her, finding normal range of motion and grip strength, although she expressed tenderness upon palpation of her forearms. Dr. Day noted, “I’m not sure what is causing such significant discomfort. I don’t think she needs to restrict her activities.” He prescribed her

pain medication. Appellant returned to Dr. Day in late July 2001, continuing her complaints of pain and asking for pain medication, which Dr. Day did not believe was advisable. Dr. Day prescribed Amitriptyline to assist in her sleeplessness. On August 3, 2001, appellant came back to Dr. Day. Because appellant said she received no relief with the last medication, he placed her back on light duty and ordered a follow-up nerve conduction study. No light duty work was available at that time, so appellee resumed TTD payments.

Dr. Day sent appellant to a hand and upper extremity orthopedic specialist, Dr. Michael Moore. He examined her physically and reviewed her recent nerve conduction studies in late September 2001. He agreed her case was perplexing in that she continued to complain of pain bilaterally despite improvement in her nerve conduction post-surgery. Dr. Moore noted sub-maximal effort on examination. He thought further evaluation was warranted, sending her to neurologist Dr. Reginald Rutherford for more tests and another opinion.

From his October 11, 2001 examination, Dr. Rutherford noted a mild abnormality on the nerve conduction studies that is common in post-surgical release. However, he did not believe that repeat surgery should be considered because there was no recurrent carpal tunnel syndrome and no neurological deficit in her upper extremities. Dr. Rutherford believed that appellant had undergone a “technically proficient surgical release of the median nerve.” Bone scans and x-rays were unremarkable, except for slight changes attributable to arthritis. Dr. Rutherford noted that appellant was a heavy woman, age forty-one, but appearing

older than her age. He noted a two-year history of diabetes, managed by medication. Dr. Rutherford suggested that she be given an impairment rating and released to work with restrictions. Dr. Moore released appellant with a five-percent permanent partial impairment rating to each of her upper extremities post-surgery, setting the rating as of October 22, 2001, after consulting the proper edition of the *AMA Guides to the Evaluation of Permanent Impairment*. This rating was approved and paid by appellee. Workers' Compensation benefits ceased at this point.

Appellant did not return to work, and instead she sought and received unemployment benefits. She did not seek any other work thereafter, nor did she seek rehabilitation benefits. She said she did not feel capable of any work because her hands continued to be problematic. On December 12, 2002, appellant went on her own to another orthopedic surgeon, Dr. Alan Sherman. Dr. Sherman ordered new electro-diagnostic studies, and based thereon, Dr. Sherman performed repeat carpal tunnel release surgeries on the right and left in the spring of 2003. Appellant healed nicely and reported improvement in her symptoms for a few months. She was released from care on May 27, 2003, without restrictions.

By the summer of 2003, Dr. Sajjad, a general practitioner in the West Memphis clinic, noted that appellant was reporting a return of pain in her hands, worse on the left than the right. Dr. Sajjad opined that appellant was incapacitated to a certain extent due to her remaining symptoms. Dr. Sajjad recommended that she not do repetitive work on a regular basis, but she could do slow repetitive work for up to two hours per day. He opined she

could regularly lift up to ten pounds, and occasionally up to twenty pounds. By December 2004, Dr. Sajjad stated in a letter that appellant's carpal tunnel syndrome symptoms had persisted, aggravated by her diabetic condition. He opined that she was unable to work. In March 2004, Dr. Sajjad requested Dr. L'Heureux, an orthopedic physician in West Memphis, to evaluate appellant's condition again for the purpose of establishing an impairment rating. Dr. L'Heureux considered the proper *AMA Guides* and assessed appellant with ten-percent impairment to each upper extremity, given her two surgeries on each extremity.

Appellant then sought additional benefits, including more TTD, more medical treatment, and more permanent partial impairment, all beyond the October 22, 2001 release given by Dr. Moore. She testified regarding her work history and the treatment she underwent. She believed that though the second surgeries improved her condition for a while, her symptoms returned, probably worse than before. She agreed she had not tried to find another job and had not sought retraining because her hands bothered her, more so on the left than the right. She said she had intermittent loss of grip strength, and daily pain, numbness, and tingling. Appellant said she asked to change doctors after Dr. Moore released her and she was refused, which is why she sought care on her own and filed the claims on her husband's health insurance.

The administrative law judge (ALJ) found that appellant had not proved by a preponderance of the evidence that she was entitled to any additional benefits. The ALJ noted that appellant sought treatment outside her authorized treating physicians, despite

having received a Form N, which delineates the procedure for changing physicians. The ALJ found no evidence to support that she sought a legitimate change of physicians, and thus any treatment subsequent to her release by Dr. Moore in October 2001 was deemed unauthorized. In addition, the ALJ found that the additional treatment begun in late 2002 and thereafter was not reasonably necessary relative to her compensable injury. Therefore, the additional medical treatment, additional TTD, and additional impairment were deemed non-compensable. In light of appellant's unwillingness to find work or to engage in rehabilitation, despite having been released with certain restrictions, the ALJ found appellant not entitled to any further TTD and certainly no permanent and total disability. On appeal to the Commission, it affirmed and adopted the ALJ's decision. Appellant then filed the present appeal with our court. We hold that substantial evidence supports the denial of additional benefits.

The healing period is that period for healing of an injury which continues until the claimant is as far restored as the permanent character of the injury will permit. *Byars Constr. Co. v. Byars*, 72 Ark. App. 158, 34 S.W.3d 797 (2000). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Arkansas Highway & Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990). Whether a

claimant's healing period has ended is a factual question that is resolved by the Commission.

*Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

Appellant does not argue on appeal that her seeking of additional treatment was authorized pursuant to the laws applicable to workers' compensation cases. She contends that seeking unauthorized care was legitimate because she was not allowed an independent medical evaluation by the employer. She does not persuade. The ALJ and the Commission had before them the opinions of Drs. Moore and Rutherford, who both thought that as of late October 2001 appellant had received proper surgical and medical care and that there was nothing further to offer her. They saw no recurrence of the syndrome, but rather saw improvement after her surgery. The Commission has the duty of weighing the evidence, including medical evidence, and the authority to determine its probative force. *University of Arkansas Medical Sciences Ctr. v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997). Appellant's choice to seek out more treatment a year later from doctors of her own choosing, who saw her condition differently than Drs. Moore and Rutherford, was not reasonable or necessary in relation to her compensable work-related injury of 2000. Moreover, after appellant's second set of surgeries, she was no better than after her first set of surgeries that were covered; in fact, appellant complained that she was worse. Post-surgical improvement is a proper consideration in determining whether additional medical treatment was reasonable and necessary. *See Winslow v. D & B Mechanical Contractors*, 69 Ark. App. 285, 13 S.W.3d

180 (2000). We affirm the finding that appellant's healing period ended in October 2001 and that no further medical treatment should be borne by her employer.

"Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages." *Johnson v. Rapid Die & Molding*, 46 Ark. App. 244, 878 S.W.2d 790 (1994). Appellant contends that she is entitled to additional TTD between October 2001 and July 17, 2003, when she recovered from her second set of surgeries. We disagree. Appellant was released without restrictions by her authorized treating physicians in October 2001. Even though there are other unauthorized treating physicians who believe that appellant is still in her healing period and cannot work, there is evidence in the record to support a contrary conclusion. The Commission, therefore, had a substantial basis for the denial of additional relief on this point. Because the Commission determined that appellant was no longer in her healing period beyond October 22, 2001, then no TTD was warranted beyond that date.

Appellant contends in her final point on appeal that she was entitled to additional permanent partial impairment based upon Dr. L'Heureux's later opinion that her two surgeries on each extremity entitled her to ten-percent permanent partial impairment, instead of the five-percent per extremity stated by Dr. Moore in 2001. Because her additional surgeries were not authorized, reasonable or necessary in relation to her compensable injuries, the resulting increased permanent partial ratings are not compensable. *Compare Byars Construction Co. v. Byars*, 72 Ark. App. 158, 34 S.W.3d 797 (2000).

We affirm the Commission's decision.

GRIFFEN and CRABTREE, JJ., agree.